Highlights from the Senate Commerce Committee Consumer Protection Subcommittee Hearing on “Stopping COVID-19 Fraud and Price Gouging”

On February 1, 2022, the Senate Committee on Commerce, Science and Transportation’s (“Committee”) Subcommittee on Consumer Protection, Product Safety, and Data Security (“Subcommittee”) convened a hearing entitled “Stopping COVID-19 Fraud and Price Gouging.” The hearing featured witness testimony from: (1) Samuel Levine, Director, Federal Trade Commission (“FTC”) Bureau of Consumer Protection; (2) Teresa Murray, Director of Consumer Watchdog Office, U.S. Public Interest Research Group; (3) Mary Engle, Executive Vice President of Policy, Better Business Bureau National Programs; and (4) Todd Leatherman, Program Counsel for the National Attorneys General Training and Research Institute Center for Consumer Protection, National Association of Attorneys General. Highlights from the hearing’s data privacy and FTC authority discussions follow below.

Data Privacy. During the hearing, Committee Ranking Member Roger Wicker (R-MS) stated that COVID-19 related scams underscore a need for uniform federal privacy legislation that would protect consumers from identity theft and “other misuses of their personal information.” In response to a question from Subcommittee Chair Richard Blumenthal (D-CT) regarding an ongoing FTC study on data collection and use practices of social media companies, Director Levine said the study will inform lawmakers on whether legislation is needed to address platform algorithms.

FTC Authority. Subcommittee Chair Blumenthal expressed concern about scams and price gouging connected to the COVID-19 pandemic and said the FTC has “failed” to deter bad actors. He stated that the FTC and Department of Justice have few tools to combat price gouging, noting that he plans to introduce a measure that would expand the agencies’ consumer protection authorities. Committee Ranking Member Wicker outlined that lawmakers should “clarify” the FTC’s authorities to combat fraud and “quickly see that victims are compensated” for any losses. Director Levine commented that the FTC is pursuing a strategy to combat scams, noting that online platforms “wash their hands of responsibility” for COVID-19 fraud and price gouging online. He highlighted that the Supreme Court’s decision in AMG Capital Management, LLC v. FTC eliminated the FTC’s ability to seek monetary relief for consumers and urged Congress to “restore” FTC monetary relief authorities.1 Sen. Mike Lee (R-UT) said any monetary relief authorities Congress may grant to the FTC should be accompanied by sufficient guardrails. He expressed support for S. 3410, the Consumer Protection and Due Process Act, which he outlined would authorize the FTC to pursue monetary remedies and grant businesses due process protections against unfounded or frivolous claims.2 Director Levine noted that approval of monetary relief by a federal judge would provide sufficient due process protection. Sen. Amy Klobuchar (D-MN) expressed concern about pandemic related scams on social media, commenting that increasing FTC funding could aid efforts to address the issue.

---